

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COMFREY JACOBS,

Defendant.

DOCKET NO. 14-PO-110-J

CHEYENNE, WYOMING

June 20, 2014

9:34 a.m.

TRANSCRIPT OF CHANGE OF PLEA AND SENTENCING PROCEEDINGS

BEFORE THE HONORABLE MARK L. CARMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

FRANCIS LELAND PICO (By Telephone)
Assistant United States Attorney
MARK R. BITTNER
Intern
UNITED STATES ATTORNEY'S OFFICE
P.O. Box 703
Yellowstone, NP 82190

For the Defendant:

SUMMER L. NELSON
GENTRY & NELSON MERRILL LAW GROUP, PC
317 East Spruce Street
P.O. Box 8331
Missoula, MT 59802

Court Reporter:

JANET DAVIS, RDR, FCRR
United States Court Reporter
2120 Capitol Avenue, Room 2228
Cheyenne, Wyoming 82001
(307) 635-3884/jbd.davis@gmail.com

Proceedings recorded by digital stenography, transcript
produced with computer.

1 (Proceedings commenced 9:34 a.m., June 20, 2014.)

2 THE COURT: We will take up the case of the United
3 States versus Comfrey Jacobs.

4 Mr. Jacobs, you're back with us today.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And you are represented by your attorney,
7 Ms. Nelson, from Missoula.

8 MS. NELSON: Yes, Your Honor.

9 THE COURT: Good day. Welcome to our court.

10 MS. NELSON: Thank you.

11 THE COURT: The Government is represented by Mr. Pico
12 who is appearing by telephone due to a family commitment.

13 MR. PICO: Good morning, Your Honor. Thank you.

14 THE COURT: Hello there.

15 MR. PICO: Thank you for accommodating me. Judge, if
16 you don't mind, Mr. Bittner will probably be doing most of the
17 talking on behalf of the United States. And as in the past,
18 Judge, when I've appeared by phone, I'm going to be putting on
19 my mute button so that no extraneous noise here will interrupt
20 the proceedings.

21 THE COURT: You mean there's extraneous noise at a
22 Scout jamboree?

23 MR. PICO: I know it seems hard to believe, but there
24 is.

25 THE COURT: Okay. And Mr. Bittner is here in the

1 courtroom representing the Government. Good morning.

2 MR. BITTNER: Good morning, Your Honor.

3 THE COURT: Okay. The -- we -- on May -- March 11th,
4 you, Mr. Jacobs appeared in front of me. You were informed of
5 the charges, your rights. And on April 2nd you were arraigned
6 and you entered a not guilty plea at that point in time. I'm
7 informed today and have been provided a copy of a plea
8 agreement. It's called Plea Agreement and Guilty Plea which
9 is -- has been signed by yourself, your counsel and by the
10 representatives of the U.S. Attorney's Office. Let me look at
11 something here.

12 Okay. Ms. Nelson, is that, in fact, what we're going
13 to do today, enter a guilty plea and do a sentencing?

14 MS. NELSON: Yes, Your Honor, that's still the
15 intention.

16 THE COURT: Okay. Is the Government ready?

17 MR. BITTNER: Yes, Your Honor.

18 THE COURT: Okay. Can I have Mr. Jacobs and your
19 attorney please approach the podium.

20 Okay. First of all, as in any case in which there's a
21 plea agreement, I want to make sure you understand the process.
22 I am not a party to the plea agreement. You will notice that
23 you will not find my signature on this form and I am -- I'm not
24 bound by this agreement. This is an agreement between you and
25 the United States Government as far as a recommendation, if you

1 will, to the Court. But I retain the right to do what I think
2 is appropriate because I'm the one who is ultimately tasked
3 with imposing the sentence. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: So you understand that I can do what I
6 think is appropriate regardless of the plea agreement, but I do
7 give weight to the agreement of the parties? Do you understand
8 that?

9 THE DEFENDANT: Yes.

10 THE COURT: And is it your intention, then, to enter a
11 guilty plea today pursuant to this plea agreement that you've
12 entered with the Government?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. The first step of doing that is to
15 have you placed under oath. I'm required to do this as part of
16 the process of entering a plea. I am required to advise you
17 that if you do provide false information to the Court while
18 under oath, it could lead to an additional prosecution for
19 perjury or false statement. Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Can you please administer the oath to Mr.
22 Jacobs.

23 (Defendant sworn.)

24 THE COURT: The first few questions I want to talk to
25 you about sometimes catch people off guard. I just want to

1 make sure that there's nothing interfering with your ability to
2 understand these proceedings and make an important decision
3 such as entry of a plea.

4 Are you currently under the influence of alcohol or
5 drugs?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Do you have any mental or physical
8 condition that would interfere with your ability to understand
9 these proceedings?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you -- do you take any prescription
12 medications?

13 THE DEFENDANT: No.

14 THE COURT: Okay. Very good. Now, other than the --
15 the recommended -- the recommendation found in the plea
16 agreement that has been made part of the record in this case,
17 has anyone else applied any pressure to you or encouraged you
18 in any other way to enter a guilty plea to this charge today?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: I just want to make sure that you are
21 doing this because it's of your own free will. Is that in fact
22 the case?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And are you a United States citizen?

25 THE DEFENDANT: Yes.

1 THE COURT: The reason I ask that is there's some
2 additional advertisements I have to give you if you are not.
3 You do understand by entering a guilty plea you will be giving
4 up your right to a trial that I explained to you sometime in
5 the past here at one of these hearings.

6 THE DEFENDANT: Uh-huh.

7 THE COURT: You understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. Mr. Bittner, there is only one
10 violation notice in this case, correct, only one charge?

11 MR. BITTNER: Only one charge as per the plea
12 agreement, correct, Your Honor.

13 THE COURT: Wait a minute. There's -- actually, I
14 have multiple charges. Let me make sure I'm clear on this.
15 The anticipation is that he would enter a guilty plea to
16 violation notice 0655322, interference with agency function?

17 MR. BITTNER: That is correct, Your Honor.

18 THE COURT: And then the remaining violations would be
19 dismissed by the Government.

20 MR. BITTNER: As per the plea agreement, Yes, Your
21 Honor.

22 MR. PICO: And that -- excuse me -- that would be a
23 dismissal, my recollection is, without prejudice.

24 MS. NELSON: I believe, Your Honor, that the agreement
25 actually says with prejudice.

1 MR. PICO: Okay. That's fine. I couldn't remember.
2 I thought it was without. If that's what the agreement says,
3 that's what the agreement is.

4 MS. NELSON: Yes, page 4, paragraph 10.

5 THE COURT: It does say --

6 MR. BITTNER: It does say with prejudice.

7 THE COURT: It does say with prejudice.

8 MR. PICO: Thank you.

9 THE COURT: Okay. Okay. And, Mr. Jacobs, so you
10 understand, when we talk about it being dismissed with
11 prejudice or without prejudice, that simply means that if it is
12 dismissed with prejudice, that means it cannot be refiled; it
13 is gone forever.

14 THE DEFENDANT: Okay.

15 THE COURT: And that's why it is a significant issue.
16 Make sure we're clear on that.

17 Okay. Mr. Jacobs, as to the charge of interfering
18 with an agency function in violation of 36 Code of Federal
19 Investigations 2.32(a)(1) on March 6th of this year within the
20 boundaries of Yellowstone National Park, how do you plead?

21 THE DEFENDANT: Guilty.

22 THE COURT: Okay. The next step is that I need to
23 talk to you a little bit about what happened. This is called
24 establishing a factual basis. What I'm trying to do is assure
25 that there is --

1 Yes, you may. One second. Thank you.

2 We have to make sure we get a good recording of this
3 event. That's the official record.

4 I was talking about establishing a factual basis. You
5 can't plead to something you didn't do, and so what I'm going
6 to do is inquire a little bit to see what happened to make sure
7 it satisfies the element of the offense.

8 So you understand, I'm going to read to you what the
9 Code of Federal Regulations specifically says. It says, "The
10 following are prohibited: Threatening, resisting, intimidating
11 or intentionally interfering with a governmental employee or
12 agent engaged in an official duty or on account of the
13 performance of an official duty."

14 Tell me what you did that you believe was interference
15 with an agency function on March 6th of this year.

16 THE DEFENDANT: I intentionally tried to halt the
17 transportation of America's last wild bison to slaughter by
18 Yellowstone National Park by placing myself in a lockbox device
19 at the Stevens Creek Bison Trap Facility's front gate.

20 THE COURT: I'm sorry. I didn't mean to interrupt.

21 THE DEFENDANT: I'm sorry. I did this in the way of
22 intentionally putting myself in the middle of the road so
23 trailers could not enter the facility.

24 THE COURT: I think you said lock gate.

25 THE DEFENDANT: Lockbox.

1 THE COURT: Lockbox, what do you mean?

2 THE DEFENDANT: I constructed a device that was meant
3 to make myself passively immovable from that gate.

4 THE COURT: And describe -- describe how you did that.

5 THE DEFENDANT: I constructed a -- basically a
6 50-gallon barrel with an arm tube inside that I had an
7 improvised handcuff around my wrist and was -- my left arm was
8 inside this barrel that was constructed to make it more
9 difficult for my removal.

10 THE COURT: Okay. And then did you actually attach
11 yourself to any of the property other than the barrel?

12 THE DEFENDANT: I was attached to the gate as well,
13 not physically, but my device was.

14 THE COURT: And this is a gate that needed to be
15 opened and closed, if you will, for purposes of the bison
16 operations by the Park Service employees?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And you did this intentionally to
19 interfere with that particular operation?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Any further -- anything from the
22 Government regarding the factual basis?

23 MR. BITTNER: Thank you, Your Honor. May it please
24 the Court, Ms. Nelson, Mr. Jacobs. The Government just want to
25 also put forward that Mr. Jacobs refused to self-release.

1 Whether he was able to or not is not relevant. However, it
2 took the rangers many hours to finally dismantle the barrel in
3 order to finally have him get released. Mr. Jacobs knew what
4 he was doing and he was intentionally interfering. Thank you.

5 THE COURT: Okay. It is the finding of the Court in
6 the case of the United States versus Comfrey Jacobs that Mr.
7 Jacobs is fully competent and he is aware of the nature of the
8 charges and the potential consequences of the plea. And he has
9 entered this guilty plea knowingly and voluntarily, and
10 further, the plea is supported by an independent basis in fact
11 as to each of the essential elements of the -- of the charge.
12 So the plea is hereby accepted and Mr. Jacobs is now adjudged
13 guilty of this offense.

14 And so now we will take up the issue of sentencing.
15 Before I do that, I will grant the Government's motion at this
16 point in time, and I will dismiss violation No. 0655321, entry
17 of a closed area, in violation of 36 C.F.R. 1.5(f), and dismiss
18 violation No. 0655323, disorderly conduct, in violation of 36
19 Code of Federal Regulations 2.34(a)(4), all occurring on March
20 6th of this year within the boundaries of Yellowstone National
21 Park. And I will grant that Government's motion, dismissal
22 then with prejudice pursuant to the agreement, the plea
23 agreement.

24 Okay. I should confirm -- I should have done this
25 before. You did in fact review and sign the plea agreement; is

1 that true, Mr. Jacobs?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And the signature on it is, in fact, your
4 signature?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And, Ms. Nelson, is this, in fact, your
7 signature and did you review this plea agreement with your
8 client?

9 MS. NELSON: Yes, Your Honor.

10 THE COURT: Okay. Okay. And likewise, Ms. Nelson,
11 are you satisfied that a factual basis has been established for
12 your client's guilty plea?

13 MS. NELSON: I am, Your Honor.

14 THE COURT: And are you satisfied that the other
15 charges have been properly dismissed?

16 MS. NELSON: Yes, Your Honor.

17 THE COURT: Okay. Very good. Okay. We now come to
18 the issue of determining a sentence. And I'm going to have Mr.
19 Bittner summarize briefly on the record what the proposed
20 sentence is pursuant to the plea agreement and then present any
21 information that he wishes that would assist the Court in
22 determining what sentence ultimately to impose.

23 MR. BITTNER: Thank you, Your Honor. May it please
24 the Court. The plea agreement has Mr. -- has Mr. Jacobs paying
25 restitution in the amount of \$355.38 to the National Park

1 Service for response costs and impacts to the park facility
2 resources.

3 Mr. Jacobs will be placed on unsupervised probation
4 for a period of one year with a condition that Mr. Jacobs does
5 not enter Yellowstone National Park for this one year.

6 Furthermore, Mr. Jacobs will not commit any violations
7 of any federal, state, tribal or local laws during this time of
8 unsupervised probation.

9 The defendant will pay a special assessment fee of \$10
10 and the court processing fee of \$25, for a total of \$35.

11 The defendant will be serving seven days in jail
12 without consideration for time served and with that ideally
13 would be today he would surrender himself to the Marshals.

14 Furthermore, Your Honor, beyond the plea agreement, it
15 should be noted that during the initial negotiations the
16 Government offered to dismiss the charges with a plea including
17 a five-year ban from the Park and five years of unsupervised
18 probation. However, Ms. Nelson and the defense countered and
19 said instead of five years, one year and seven days in jail, to
20 which the Government accepted.

21 Furthermore, Mr. Jacobs does not seem to show remorse
22 for his actions despite hindering Park Service resources and
23 business -- and the business conduct of the bison.

24 Furthermore, Mr. Jacobs has actually partnered with
25 somebody else regarding a -- regarding the contributions for

1 his legal defense in a fund and ultimately raised 4,990. As a
2 result, depriving Mr. Jacobs of his freedom for one week seems
3 to be more than acceptable as a result of this and that the
4 plea agreement overall would be fair.

5 And furthermore, accordingly, as stated before, the
6 National Park rangers took many hours to release Mr. Jacobs
7 from the barrel that he attached himself to, 55-gallon barrel,
8 took many hours and Mr. Jacobs refused to self-release. And it
9 apparently seemingly appeared to the rangers that he would have
10 been able to self-release far before the dismantling of the
11 barrel.

12 Therefore, the Government believes that this plea
13 agreement is acceptable and worthwhile of Mr. Jacobs'
14 incarceration. Thank you.

15 THE COURT: Okay. And I know we have Mr. Pico on the
16 line. Does Mr. Pico have anything he wishes to add at this
17 point in time?

18 MR. PICO: No. I think Mr. Bittner has said
19 everything appropriately, Your Honor. And I will tell you,
20 Judge, that the initial discussion that I had with Ms. Nelson
21 was with regard to a five-year ban from the Park, she --
22 initially we had discussions about 10 to 20 days and we
23 discussed and agreed upon the 7-day jail sentence. I believe
24 that a 7-day jail sentence is reasonable under all the facts
25 and circumstances as outlined by Mr. Bittner, and the -- one of

1 the things we're interested in telling folks is that it's not
2 appropriate to do this and that there is jail consequences for
3 this, so that's the (inaudible). Thank you.

4 THE COURT: Now I will turn to Ms. Nelson. I want to
5 give you an opportunity to speak on behalf of your client at
6 this point in time.

7 MS. NELSON: Okay. Thank you, Your Honor. Do I need
8 to adjust the --

9 THE COURT: Yes, please.

10 MS. NELSON: Okay. Your Honor, I would just point out
11 that Mr. Jacobs has no prior convictions on his record and even
12 this act of nonviolent civil disobedience that was motivated by
13 his compassion and political convictions is the first of its
14 kind; that he's participating with Buffalo Field Campaign and
15 other social and environmental justice efforts in many other
16 ways as well, as he may share with the Court. You know, he's
17 written letters, he has petitioned the government in other
18 ways, and he's currently employed as a coordinator for the
19 Buffalo Field Campaign helping carry out fully legal activities
20 and that this action was simply motivated by his conviction
21 that what the government was doing was wrong and that he
22 believed there was a better way. And he was willing to put
23 himself -- you know, to take some sacrifice in order to do what
24 he thought was -- was the right -- to encourage the Government
25 to take the right action.

1 And Mr. Jacobs has appeared for every hearing. I
2 believe this is the third time, perhaps, that he's appeared
3 here and traveled to the court and has shown that he's willing
4 to take responsibility for his actions and by his signature on
5 the agreement can see that he's even willing to sacrifice his
6 freedom for seven days.

7 But I do think that the remainder of the agreement,
8 the sentence would be sufficient, if Your Honor decides not to
9 impose a jail sentence. There were a couple similar cases in
10 2008, Case Nos. 208-M-2072-001 and M-2073-001. They were
11 Simonitis (sic) and Wasser, and they were two young woman who
12 locked themselves to the Visitor Center here in Mammoth and
13 also refused to release for some time and had the Park on high
14 alert. They were charged with disorderly conduct and resisting
15 and interfering with government employees.

16 And the plea agreement and Judgment -- there was
17 dismissal of one charge and they entered guilty pleas to one
18 and they served a sentence of one year unsupervised probation
19 with a ban from the Park and paid a \$10 assessment and \$120 --
20 \$125 fine.

21 And so I don't think that anything much above and
22 beyond that is necessary here. And I would say that Mr. Jacobs
23 would be willing to, say, pay a fine from that legal defense
24 fund and/or have a fine that's converted to community service
25 and would be willing to report and serve the community in that

1 way as an alternative to jail or extended probation. And some
2 of his -- he's planning to continue to work for Buffalo Field
3 Campaign through the summer and then would like to go spend
4 some time with his mother in Colorado and then would be seeking
5 employment again the following year.

6 So that's all for now, Your Honor. Thanks.

7 THE COURT: Okay. Mr. Jacobs, you have an opportunity
8 to tell the Court anything you would like the Court to take
9 into account at the time of sentencing. I will, quite frankly,
10 perhaps have some questions for you, but I wanted to give you
11 an opportunity to make sure -- I want to make sure I give you
12 the opportunity to tell me anything you'd like me to take into
13 account in imposing the sentence in this matter.

14 THE DEFENDANT: I have nothing I would like to add
15 except that I'm fully ready to accept all responsibility and
16 consequences of my actions. Uhm, I believe that even though
17 they may be deemed illegal, I was doing the right thing in
18 standing up for what I believe in as far as the teachings of
19 some of my great mentors like Martin Luther King and Gandhi.
20 And I'm completely ready to face whatever happens.

21 THE COURT: Okay. I find it interesting that you
22 would invoke people like Gandhi and Martin Luther King and the
23 great works they did on behalf of people and compare it with
24 the work of the bison, the BFC. What I'm more interested in is
25 what kind of citizen are you going to be going forward. There

1 are people who believe that their own personal beliefs allow
2 them to violate the law and there are mechanisms in this
3 country, not in all countries but in this country, which grant
4 people the right to express their opinions. Our First
5 Amendment is well recognized is the freedom of speech and you
6 have, obviously, exercised your freedom of speech on other
7 occasions without causing violations of law.

8 In this one you took active steps beyond the freedom
9 of speech designed to specifically interfere with a lawful
10 government operation. How did you get the idea for the device?

11 THE DEFENDANT: I have seen it used in multiple other
12 activist campaigns.

13 THE COURT: And is there plans on the Internet for how
14 to do it or --

15 THE DEFENDANT: No, it was something that I
16 constructed on a basic concept.

17 THE COURT: Okay. And did that involve any metal
18 working, welding or anything of that nature, or how did that
19 work?

20 THE DEFENDANT: No, it involved finding a bunch of
21 scrap pieces at a junkyard and constructing it and buying
22 concrete out of my personal money.

23 THE COURT: Okay. And how you were -- you've been
24 with the BFC for how long now, working with them?

25 THE DEFENDANT: Almost two years.

1 THE COURT: And it is my understanding that you have
2 solicited and raised monies for your defense?

3 THE DEFENDANT: That's correct, Your Honor.

4 THE COURT: Okay. And is it true that you've raised
5 about \$5,000?

6 THE DEFENDANT: That is correct, Your Honor. I had a
7 lot of public support for my action and people wanted to
8 contribute whatever way they could.

9 THE COURT: But it is my understanding that Ms. Nelson
10 is not charging for this, she's providing these services pro
11 bono. Is that, in fact, the case?

12 THE DEFENDANT: There's going to be expenses for
13 travel and other things provided out of my legal fund, and we
14 will perhaps work out an agreement for some monetary
15 contribution as well.

16 THE COURT: Because I do have a little bit of concern.
17 If people are giving you money to provide for your legal
18 defense, then that money should be used for your legal defense.
19 It shouldn't be used to profit. I mean, I'm concerned that you
20 may financially profit from your actions here.

21 THE DEFENDANT: I am not interested in financial
22 benefits from this. I was doing this to raise awareness on the
23 issue, and I believe that money should be going towards
24 supporting my current legal situation and the buffalo.

25 THE COURT: Okay. Do you work with BFC in any other

1 locations than the Yellowstone ecosystem?

2 THE DEFENDANT: No.

3 THE COURT: Okay. I don't know if they -- I don't
4 know if the BFC works anywhere else. Do you know?

5 THE DEFENDANT: We have large bases of national and
6 international support and occasionally do road shows and
7 speaking tours.

8 THE COURT: Are you working on behalf of any other
9 groups other than other than the BFC?

10 THE DEFENDANT: I wouldn't say working, but I do
11 volunteer with a lot of other groups.

12 THE COURT: Okay. And do you have any employment?

13 THE DEFENDANT: I'm currently employed by Buffalo
14 Field Campaign and was working in a gift shop in West
15 Yellowstone.

16 THE COURT: Okay. One of the things that's often
17 used, one of the powers of sentencing often used by this Court
18 is a ban from the Park, and the plea agreement involves a ban
19 of one year. It is my understanding really that -- the plea
20 negotiations are not my concern, but nevertheless, I have been
21 informed that a jail sentence was actually something that was
22 proposed by the defense in this case, not by the Government.

23 Can you explain to me why you think a jail sentence is
24 more appropriate than a ban from Yellowstone National Park?

25 THE DEFENDANT: Uhm, I feel that the ban from

1 Yellowstone, though probably well deserved for my action and I
2 would accept, but I feel that it is trying to limit the work
3 that I do with Buffalo Field Campaign in several ways. And
4 honestly, I feel if I was going to be incarcerated in the
5 judicial system, I would rather be physically incarcerated.

6 THE COURT: Have you ever been arrested before?

7 THE DEFENDANT: Uhm, I have been in custody before.

8 THE COURT: What was that about?

9 THE DEFENDANT: Uhm, similar political actions, not
10 quite as extreme, but unpermitted marches in the 2008
11 Democratic National Convention.

12 THE COURT: So that was something where a lot of
13 people were arrested?

14 THE DEFENDANT: There were mass arrests in that.

15 THE COURT: And you were never charged?

16 THE DEFENDANT: I was never charged.

17 THE COURT: And where are you living now?

18 THE DEFENDANT: I'm currently living at 14365 Hebegan
19 Lake Road, West Yellowstone, at Buffalo Field Campaign's
20 headquarters.

21 THE COURT: When you set up this -- this blockade, if
22 you will, were there -- did you have other people there with
23 you at that time.

24 THE DEFENDANT: No.

25 THE COURT: Were there -- did other people show up and

1 watch?

2 THE DEFENDANT: Yes.

3 THE COURT: How did they know? Did you tell them
4 ahead of time you were going to do it so they knew to be there?

5 THE DEFENDANT: They didn't know what I was going to
6 do but they did have a general idea that something was going to
7 happen.

8 THE COURT: And you have a high school diploma?

9 THE DEFENDANT: I do have a GED.

10 THE COURT: Okay. And do you have any post-high
11 school education?

12 THE DEFENDANT: I have attended vocational classes
13 with college credits for wildland firefighting.

14 THE COURT: Have you ever worked with -- in
15 firefighting?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you ever obtained any formal
18 education regarding wildlife management, ecosystems?

19 THE DEFENDANT: I have audited the classes but I have
20 never actually attended any long term.

21 THE COURT: Where did you audit classes?

22 THE DEFENDANT: I audited classes at Colorado Mesa
23 University and Colorado Mountain College.

24 THE COURT: What are your plans for the next five
25 years?

1 THE DEFENDANT: Uhm, I would like to continue working
2 with Buffalo Field Campaign and the buffalo for at least the
3 next year, and then I was planning on attaining a veterinary
4 technician degree in the next several years.

5 THE COURT: And do you have family support to help you
6 achieve that goal?

7 THE DEFENDANT: Not financial, but I do have
8 Americorps stipends from working with youth corps in the past.

9 THE COURT: And how old are you?

10 THE DEFENDANT: I'm 21.

11 THE COURT: Anything further from the Government at
12 this point in time?

13 MR. BITTNER: Yes, Your Honor. Thank you. While it
14 is not part of the plea agreement, the Government would accept
15 any excess profits from the donation for Mr. Jacobs' legal
16 defense fund to be donated as a community service payment to
17 the Yellowstone National Park Wildlife Protection, if that
18 would be acceptable to the defense.

19 The Government doesn't feel -- the Government does not
20 want Mr. Jacobs to profit from this ordeal with the donations
21 made to him.

22 MS. NELSON: Maybe you can explain.

23 If it is all right, Your Honor, can I have my client
24 explain how this fund is set up and what the plans for that
25 money are, just so we have an idea.

1 THE COURT: Yes.

2 THE DEFENDANT: That legal fund was established by a
3 supporter who I've never actually met in my entire life. We've
4 only had Internet communications. They set it up through a
5 website called Go Fund Me, I believe. That money was later
6 transferred to a Pay Pal account to my bank account, and some
7 of it still remains in an Internet account and some of it is in
8 my physical account to pay for expenses such as restitution, my
9 attorney's expenses and my personal travel expenses for legal
10 issues.

11 I don't want to profit from this. I didn't do this to
12 profit or for self-gain. I did this for the Buffalo and what
13 is leftover after the entire costs of my legal fees,
14 restitution and my legal counsel's expenses, I was going to
15 give that back to nonprofits and other community organizations
16 that are doing similar work as myself.

17 THE COURT: I do have a concern about profiting from
18 this offense. I have a little bit of concern that other people
19 are paying your restitution as well, but --

20 MR. BITTNER: If I may, Your Honor, the fact of the
21 matter is the wild -- Yellowstone National Park Wildlife
22 Protection would be a community service payment and that could
23 be considered a nonprofit, so, therefore, Mr. Jacobs' goals and
24 the Government's goals are very similar. This would just be a
25 specified place to donate to. Thank you.

1 THE COURT: But I'm also questioning this -- what I'm
2 thinking about here is that I don't know how much to order that
3 payment because I think some of that money should go to your
4 counsel for her representation. And I don't know whether she
5 plans to -- I mean, it is a little different situation to take
6 on a client pro bono. It is a different situation to take a
7 client pro bono who has a legal defense fund. And so --

8 MS. NELSON: Your Honor, I think, you know, when his
9 fund started nobody had any idea how much he would get and he
10 didn't know what he would be facing in terms of restitution or
11 fines. So until recently there were a lot of unknowns around
12 this.

13 So our agreement was that he would cover costs and
14 that I was not charging for representation.

15 THE COURT: And that's the agreement you're going to
16 stay with, you're not going to change your agreement with your
17 client and request any payment out of the legal defense fund
18 for your services.

19 MS. NELSON: I'm not going to request any fee. If he
20 chooses to use it for that because there's some left over then
21 we can have that discussion separately. But I -- my
22 understanding has always been that it would -- that money was
23 set aside for whatever he needed because people were interested
24 in supporting.

25 THE COURT: But it is my understanding it was entitled

1 a legal defense fund. Is that in fact correct, Mr. Bittner?

2 MR. BITTNER: It is entitled Direct Action: Fund
3 Comfrey Root. Furthermore, it initially states that the goal
4 was \$5,000 and that as of April 26th, 2014 the money -- the
5 \$4,990 were raised and that they were no longer accepting any
6 donations. This is all available on the public.

7 THE COURT: Tell me again, what was -- what was the
8 solicitation?

9 MR. BITTNER: The solicitation is Direct Action: Fund
10 Comfrey Root. There's a little blurb underneath that that
11 explains the situation as to what occurred, the events that led
12 to Mr. Jacobs' arrest.

13 THE COURT: Does it specifically indicate that it is
14 seeking funds for the legal defense or does it say legal
15 defense and other purposes?

16 MR. BITTNER: If you can give me a couple seconds,
17 Your Honor, please.

18 Quote: "The campaign's intent is to raise \$5,000 as a
19 seed fund for the path this young man must now walk as he has
20 dared to stand in the way of human aggression toward the other
21 creatures of our planet. If it raises \$25 ,000 or \$250,000 or
22 whatever ridiculous amount it takes to fully ensure that this
23 action becomes a symbol of what's possible in creating a world
24 that works for all, that's okay, too." However, that was later
25 taken down after the \$5,000 goal was raised.

1 THE COURT: Okay.

2 MR. BITTNER: Thank you.

3 Oh, I apologize, Your Honor. First paragraph, it
4 specifically states, "If you would like to support Comfrey in
5 his legal battle, you can send him money directly via his Pay
6 Pal address." Thank you.

7 THE COURT: Okay. Anything further you would like to
8 add, Ms. Nelson?

9 MS. NELSON: Yeah. Just reiterating, Your Honor, that
10 this wasn't something that Mr. Jacobs initiated. It was
11 something that an individual undertook on his behalf.

12 THE COURT: And I -- and I understand that, and I --
13 and I also believe that you did not undertake this activity for
14 financial gain. I understand that you have beliefs and that is
15 what generated this action, not a desire to make money on it.
16 But I am concerned. I do -- not interested in having you
17 profit from this and that you shouldn't be rewarded for this
18 behavior. You should be penalized.

19 Mr. Bittner.

20 MR. BITTNER: I apologize, Your Honor. As a response
21 to Ms. Nelson, there is a -- there is a correspondence between
22 Mr. Jacobs and the person who started it in which Mr. Jacobs
23 explicitly states, "Send it to my Pay Pal account or you could
24 write me a check if the Pay Pal account hasn't been set up."
25 Therefore, Mr. Jacobs absolutely acquiesced to this legal

1 defense fund and didn't object to it in any way. Thank you.

2 THE COURT: Okay. The issue before the Court -- Mr.
3 Jacobs, anything further you would like to tell me?

4 THE DEFENDANT: No. But I am incredibly grateful for
5 the amount of support that the public has shown me, financially
6 and morally.

7 THE COURT: The issue that's presented to the Court
8 and what I have to resolve at this point in time is the
9 appropriate sentence for the violation which is interference
10 with a governmental function. I'm presented with a plea
11 agreement that includes a payment of restitution and some
12 mandatory assessments, a period of one year of probation with a
13 ban from the Park and credit -- or sentence of seven days in
14 jail.

15 Now, what I'm trying to decide is what I do as far
16 as a sentence. As I indicated earlier, I'm not bound by the
17 plea agreement. I am free to do what I think is appropriate.
18 I take putting people in jail as a very serious matter, and
19 there are certain things I take into account before I send
20 somebody to jail.

21 I do believe that you do not have any remorse for your
22 actions, but that I also believe is because the actions were
23 generated by strongly held beliefs. And you did not commit a
24 crime of violence here. What you did was simple disobedience
25 designed to interfere with a lawful government operation.

1 You exceeded the permissible scope of free speech.
2 While we have a very dear right of free speech in this country,
3 it is not without limitations. And your actions exceeded the
4 bounds of free speech because you went beyond speech and
5 actively attempted to disrupt a lawful operation.

6 But you also do not have a criminal record. You have
7 indicated you have a prior arrest, but you do not have a
8 criminal record. You did not engage in conduct intending to
9 harm anybody physically.

10 I'm having a little bit of a struggle about whether
11 you're somebody I think that I should be putting in jail.
12 Obviously if this is conduct that continued or you -- and I
13 have no indication that you actively attempted to encourage
14 other people to engage in this same kind of conduct. You may
15 have encouraged people to support the campaigns of the BFC and
16 the beliefs of the BFC, but I don't have any information in
17 front of me that you have encouraged other people to engage in
18 this type of civil disobedience, physically obstructing, so I'm
19 not feeling comfortable with that.

20 And I also think that there are penalties I can impose
21 that will bring home to you the seriousness of your actions far
22 more effectively than that of putting you in -- in the jail
23 being supported, rather expensively, by the United States
24 government for a period of seven days.

25 So, here's what I'm going to do, Mr. Jacobs. I'm

1 going to impose a fine of \$500. Also, there's a mandatory \$10
2 assessment for the victims of crime and a \$25 court processing
3 which brings that obligation to \$535.

4 I'm going to order you to pay restitution to the
5 National Park Service in the amount of \$355.

6 I'm also going to order you to make a community
7 service restitution payment -- I shouldn't say restitution --
8 community service payment to the Yellowstone Park Foundation
9 Wildlife Protection Fund in the amount of \$2,500. This is an
10 organization who does a tremendous amount for the -- for
11 Yellowstone and for the wildlife in Yellowstone, and they
12 can -- they can utilize that assistance, effectively and
13 lawfully, I might add.

14 I'm going to place you on three years of unsupervised
15 probation. Conditions are that you have no violations of law,
16 federal, state or local. You will be banned from the entry of
17 Yellowstone National Park for the period of that probation. I
18 believe that this may be the biggest penalty I give you, quite
19 frankly. And I hope that this will be a strong indication to
20 anybody who contemplates this same kind of conduct that we
21 cannot and will not sustain this kind of behavior within the
22 park that interferes.

23 Perfectly free to express disagreement and create
24 public awareness about the situation involving the bison,
25 being involved in lawful hearings and discussions about the

1 best way to manage the bison in the Park. That's all perfectly
2 acceptable. What you did was not.

3 It is my understanding that because you have these
4 funds available you will be able to pay all of these amounts in
5 the next few weeks. Is that in fact true, Mr. Jacobs?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: So I will order that all of these monies
8 be paid, and the directions on how to pay them will be set
9 forth in the Judgment by -- I'm going to give you 'till July
10 11th, just so that you can get all the paperwork straightened
11 out. I don't know how -- the situation involves Pay Pal
12 accounts and all that. But by July 11th you will pay the fine,
13 the restitution and the community service payment.

14 MR. BITTNER: Your Honor.

15 THE COURT: Yes.

16 MR. BITTNER: I believe the original proposed amount
17 for restitution was 355 and 38 cents. Did you want to address
18 the 38 cents?

19 THE COURT: I did not notice the 38 cents.

20 I'm -- I'm going to give you a break. I'm going to
21 round down to \$335. And I -- is there anything further from
22 the Government?

23 MR. BITTNER: Just one. When will Mr. Jacobs have to
24 vacate the Park by? Thank you.

25 THE COURT: By 5:00 today.

1 Mr. Jacobs, what I would encourage you to do -- and
2 now, this is the part that is not an order, not part of the
3 sentence -- is that if you have a passion, which apparently you
4 do, for wildlife of this country, that you undertake a more
5 scholarly education on it. I happen to have a degree in
6 forestry and natural resources from Colorado State University.
7 And I believe that there is always room for scientific and
8 political debate about these issues, and the more knowledge and
9 the more education you have, the more you can contribute to
10 that discussion.

11 And I would encourage you to pursue that to the best
12 of your abilities. You're obviously intelligent. You're
13 obviously dedicated. You have a lot to offer other than tying
14 yourself to a barrel in front of a gate. I believe that.

15 Okay. Anything further, Ms. Nelson?

16 MS. NELSON: No, Your Honor.

17 THE COURT: You have any other statements, questions
18 for me?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: We will stand in recess.

21 (Proceedings concluded 10:25 a.m., June 20, 2014.)
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, JANET DAVIS, Federal Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Diplomate Reporter and Federal Certified Realtime Reporter, do hereby certify that I transcribed from a digital recording to the best of my abilities the foregoing proceedings contained herein on the aforementioned subject and that the foregoing pages constitute a full, true and correct transcript.

Dated this 9th day of July, 2014.

/s/ Janet Davis

JANET DAVIS
United States Court Reporter
Registered Diplomate Reporter
Federal Certified Realtime Reporter